


(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Ross E. Viselman 1149 South Hill Street Los Angeles, California 90015-2299 Bar # 204979	Case Number(s): 11-O-13101 11-O-13360	For Court use only PUBLIC MATTER FILED  JAN - 4 2013 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Michael Gerner 425 South Beverly Drive, Suite 210 Beverly Hills, California 90212 Bar # 65906	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Hieu Duc Do Bar # 179849 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted on December 7, 1995.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 15 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Effective January 1, 2011)

Actual Suspension

JB
12/15/12

- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: two billing cycles following the effective date of the Supreme Court order. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

See attachment.

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See attachment.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of two years.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of two years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of 60 days.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

(1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(Do not write above this line.)

- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .

(Do not write above this line.)

- (2) ☐ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

(Do not write above this line.)

In the Matter of: Hieu Duc Do	Case Number(s): 11-O-13101, 11-O-13360
----------------------------------	---

Financial Conditions

a. Restitution

- ☒ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Federal Insurance Company	\$11,895	April 2011
Federal Insurance Company	\$13,770	May 2011

- ☐ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- ☒ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of preapproval), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Federal Insurance Company	\$75	monthly
Federal Insurance Company	\$75	monthly

- ☒ If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

- ☐ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- ☐ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Hieu Duc Do

CASE NUMBER(S): 11-O-13101, 11-O-13360

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 11-O-13101 (Complainant: Honorable Sheri Bluebond)

FACTS:

1. On January 28, 2010, Axiom International Inc. ("Axiom") filed for bankruptcy, *In re Axiom International, Inc., and Related Actions*, No. 2:08-bk-10277-BB (the "Bankruptcy Matter") in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court").
2. Respondent represented Maha Visconti, who was a party to an adversary proceeding in the Bankruptcy Matter. During this time, Respondent also represented Maha Visconti in her divorce from John Visconti, who was one of Axiom's principals at the time Axiom filed for bankruptcy.
3. On October 25, 2010, the Bankruptcy Court entered an order approving a settlement agreement in the Bankruptcy Matter (the "Settlement Order") between the trustee for the Axiom estate and other parties, including John Visconti and Federal Insurance Company, which had issued Axiom an errors and omissions policy ("Federal"). Among other things, the Settlement Order resolved issues relating to Federal's coverage of Axiom and its executive, John Visconti, and prohibited "all persons ... from commencing, prosecuting or asserting any actions or claims against" Federal relating to the Bankruptcy Matter.
4. Respondent objected to the Settlement Order on behalf of Maha Visconti (the "Objection") claiming, for example, that her husband, John Visconti, stole money from Axiom, that the trustee for the Axiom estate was helping to "conceal" her husband's fraud, and that her husband was using the Bankruptcy Matter to avoid meeting his financial obligations to her. The Bankruptcy Court overruled the Objection.
5. On November 12, 2010, Respondent filed a lawsuit, *Maha Visconti v. Chubb Group of Companies, et al.*, Los Angeles County Superior Court case no. SC 110316 (the "Federal Action"). Chubb Group of Companies is a trade name for Federal. In the Federal Action, Respondent reiterated many of the allegations raised in the Objection.
6. Respondent knew that by filing the Federal Action, he was violating the Settlement Order.

7. On December 13, 2010, the Federal Action was removed to the Bankruptcy Court. On February 22, 2011, the Bankruptcy Court imposed sanctions against Respondent and Maha Visconti, jointly and severally, in the amount of \$11,895 for filing the Federal Action in violation of the Settlement Order. Although Respondent has commenced making payments on the sanctions, Respondent has not, as of the date of this Stipulation, fully paid the balance. The Federal Action was dismissed on April 4, 2011.

8. On January 6, 2011, Respondent filed another lawsuit, *Maha Visconti v. Kim D. Hogrefe*, Los Angeles County Superior Court case no. SC 452404 (the "Hogrefe Action"). Kim Hogrefe is the Federal executive who signed the Settlement Order on behalf of Federal in the Bankruptcy Matter. In the Hogrefe Action, Respondent reiterated many of the allegations raised in the Objection.

9. Respondent knew that by filing the Hogrefe Action, he was violating the Settlement Order.

10. Like the Federal Action, the Hogrefe Action was removed to the Bankruptcy Court. On March 24, 2011, the Bankruptcy Court imposed sanctions against Respondent and Maha Visconti, jointly and severally, in the amount of \$13,770 for filing the Hogrefe Action in violation of the Settlement Order. Although Respondent has made payments on the sanctions, Respondent has not, as of the date of this Stipulation, fully paid the balance. The Hogrefe Action was dismissed on April 6, 2011.

11. On January 12, 2011, the Bankruptcy Court issued an order "barring" Respondent from serving as counsel in the Bankruptcy Matter. Respondent received this order; nonetheless, Respondent continued to represent Maha Visconti in the Bankruptcy Matter by filing and serving court documents on behalf of Maha Visconti in February and March 2011.

12. On March 24, 2011, the Bankruptcy Court issued an order declaring Respondent a vexatious litigant and imposed a pre-filing order permanently enjoining Respondent from filing, without leave of the Bankruptcy Court, any court documents related to the Bankruptcy Matter.

13. Respondent failed to report to the State Bar either of the monetary sanctions imposed on him by the Bankruptcy Court.

CONCLUSIONS OF LAW:

14. By filing the Federal Action and the Hogrefe Action; and by filing documents on behalf of Maha Visconti in the Bankruptcy Matter after the Bankruptcy Court barred him from doing so, Respondent wilfully disobeyed and violated orders of the Bankruptcy Court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code section 6103.

15. By not reporting to the State Bar either of the monetary sanctions imposed on him by the Bankruptcy Court, Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of such judicial sanctions against Respondent, in willful violation of Business and Professions Code section 6068(o)(3).

FACTS:

16. On March 23, 2010, Respondent sent a letter to John Finnegan, an executive with Federal, demanding that Federal suspend its insurance payments to Axiom, and seeking Federal's cooperation in the divorce proceedings between Respondent's client, Maha Visconti, and Axiom executive, John Visconti.

17. At the time Respondent sent his letter to Finnegan, Respondent knew that Federal (and Finnegan) were represented by counsel in the Bankruptcy Matter, and that he did not have authorization of Federal's counsel to communicate about the Bankruptcy Matter with Finnegan.

18. On February 7, 2011, Respondent sent a letter to Christopher Zaetta ("Zaetta"), one of the attorneys for Federal in the Bankruptcy Matter. In this letter, Respondent alleged that the Settlement Order allowed John Visconti to defraud the Axiom estate, and argued that Federal's motions to enforce the Settlement Order (all of which the Bankruptcy Court, in fact, granted) were frivolous. In this letter, Respondent threatened to "make sure that you [Zaetta] are reported to the right authorities [and] disbarred."

19. On February 21, 2011, Respondent sent Zaetta another letter in which Respondent informed Zaetta that "because of your devious Actions ... [n]ot only will your credentials be in jeopardy, but also your professional legitimacy will [] be questioned." Again, this letter complained about the Settlement Order and John Visconti, and accused Zaetta of "abuses of the law..., i.e. directing and supporting a client to commit fraud."

20. Respondent sent his February 7 and February 21 letters to Zaetta for the purpose of obtaining an advantage on behalf of his client in the Bankruptcy Matter and in the divorce proceedings between Maha and John Visconti. At the time Respondent sent these letters, Respondent knew that Zaetta represented Federal and that Zaetta did not represent John Visconti or the trustee of the Axiom estate.

CONCLUSIONS OF LAW:

21. By sending a letter to an executive of Federal, while representing Maha Visconti in the Bankruptcy Matter, and demanding that Federal cooperate in Maha Visconti's claims against John Visconti, Respondent represented a client and communicated about the subject of that representation with a party Respondent knew was represented by another lawyer, without the consent of that lawyer, in willful violation of Rules of Professional Conduct, rule 2-100(A).

22. By threatening Zaetta with State Bar discipline for actions taken on behalf of Federal in the Bankruptcy Matter, Respondent threatened to present disciplinary charges to obtain an advantage in a civil dispute, in willful violation of Rules of Professional Conduct, rule 5-100(A).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm: Respondent's misconduct caused significant harm to the administration of justice. Respondent's invalid filings and refusal to follow orders and rules of the Bankruptcy Court repeatedly

disrupted the bankruptcy proceedings. In addition to violating court orders, Respondent's misconduct wasted the time (and resources) of opposing counsel and the trustee in the Bankruptcy Matter.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although the misconduct is serious, Respondent has no record of prior discipline in the 13 years since his admission. (*In the Matter of Stamper* (Rev. Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, n.13.)

Candor/Cooperation: Respondent cooperated in the investigation of this case and is further cooperating by entering into this Stipulation to resolve this matter before the filing of disciplinary charges. (*In the Matter of Riordan* (Rev. Dept. 2007) 5 Cal. State Bar Ct. Rptr 41.)

Emotional/Physical Difficulties: At the time of Respondent's professional misconduct, Respondent suffered extreme emotional difficulties which expert testimony would establish was directly responsible for the misconduct. The difficulties were not the product of any illegal conduct by the Respondent, such as illegal drug or alcohol abuse. Although Respondent still suffers from such difficulties, Respondent now recognizes such difficulties and "continue[s] to obtain psychiatric help" to overcome such difficulties. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 412. *See also Frazer v. State Bar* (1987) 43 Cal. 3d 564, 577 (allowing mitigation for attorney who was suffering from agoraphobia/depression at time of misconduct and actively seeking treatment.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

The principal violations at issues here are: Business and Professions Code section 6103 and Rule of Professional Conduct 5-100.

Because Respondent admits to committing two acts of professional misconduct, Standard 1.6(a) applies. Under Standard 1.6 (a), where Respondent acknowledges two or more acts of misconduct, and different

sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent's misconduct is found in standard 2.6, which applies to Respondent's violation of Business and Professions Code section 6103. Pursuant to Standard 2.6, the discipline imposed "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim."

Here, Respondent's misconduct arose out of his representation of a client in a single bankruptcy matter. As is apparent from court filings and transcripts in the Bankruptcy Matter, Respondent's violation of the Bankruptcy Court's Settlement Order, and his improper correspondence with opposing parties were motivated by his desire (however misguided) to assist his client, who expressed that her husband defrauded the bankrupt company and was using the Bankruptcy Matter to avoid meeting financial obligations to his family.

Given the rule 5-100 violation at issue here, an analogous case is *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160. In *Elkins*, the Review Department found the attorney culpable of disrespecting the court officer and sending threatening letters in connection with contentious probate litigation. Apparently, the attorney left 53 threatening and abusive voicemail messages to the administrator of the estate, the attorney for the administrator, and the judge. Messages included statements such as: "I'm going to the FBI on you people if you don't back off now." He also accused the judge of taking bribes. The attorney received credit for practicing over 30 years without discipline. In *Elkins*, the discipline imposed was two years' stayed suspension, and two years' probation with 90 days of actual suspension.

Another applicable case is *Sorenson v. State Bar* (1991) 52 Cal. 3d 1036. In *Sorenson*, the Supreme Court found that the attorney had filed a lawsuit against an individual that was frivolous and "motivated in large measure by spite and vindictiveness." (*Id.* at 1042.) As aggravation, the Supreme Court noted that the attorney showed a "lack of insight and remorse." (*Id.* at 1044.) Appropriate discipline was found to be one year stayed suspension with two years' probation and 30 days' actual suspension.

As in *Elkins*, Respondent sent inappropriate and threatening letters to opposing counsel. In addition, as in *Sorenson*, Respondent filed frivolous lawsuits and disobeyed an explicit court order. Still, Respondent's misconduct was not as extensive as in *Elkins* or as vindictive as in *Sorenson*. Taking into account the mitigating circumstances, including Respondent's 13 years of practice without a record of prior discipline, the parties agree that appropriate discipline is two years' stayed suspension, two years' probation with 60 days' actual suspension.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was December 4, 2012.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY.

The parties waive any variance between the Notice of Disciplinary Charges filed in this matter, and the facts and/or conclusions of law obtained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a

Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

DISMISSALS

The parties respectfully request that the Court, in the interest of justice, dismiss Count 4 of the Notice of Disciplinary Charges filed in this matter. This Count alleges that Respondent violated rule 5-100(A) of the Rules of Professional Conduct.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 27, 2012, the prosecution costs in this matter are \$5,182.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may *not* receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

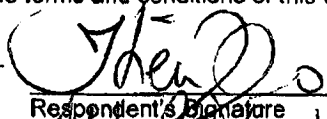
In the Matter of:
Hieu Duc Do

Case number(s):
11-O-13101, 11-O-13360

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

12/5/12
Date


Respondent's Signature

Hieu Duc Do

Print Name

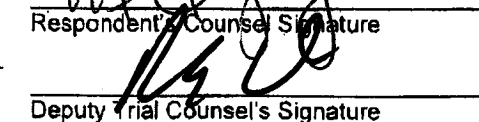
12-5-12
Date


Respondent's Counsel Signature

Michael Gerner

Print Name

12-6-12
Date


Deputy Trial Counsel's Signature

Ross E. Viselman


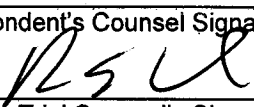
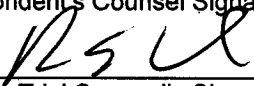
Print Name

(Do not write above this line.)

In the Matter of: Hieu Duc Do	Case number(s): 11-O-13101, 11-O-13360
---	--

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>12/4/12</u> Date	 Respondent's Signature	<u>Hieu Duc Do</u> Print Name
<u>12/10/12</u> Date	 Respondent's Counsel Signature	<u>Michael Gerner</u> Print Name
	 Deputy Trial Counsel's Signature	<u>Ross E. Viselman</u> Print Name

(Do not write above this line.)

In the Matter of: Hieu Duc Do	Case Number(s): 11-O-13101, 11-O-13360
----------------------------------	---

ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

PAGE 5 - SECTION E. (10) - PLACE CHECK MARK IN BOX

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

01-03-2013
Date


Judge of the State Bar Court

RICHARD A. PLATEL

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **11-O-13101; 11-O-13360**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING - ACTUAL SUSPENSION



By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.



By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))



By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').



By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*



(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: _____ at Los Angeles, addressed to: *(see below)*



(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,
Tracking No.: _____ addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
MICHAEL GERNER	425 SOUTH BEVERLY DRIVE, STE. 210 BEVERLY HILLS, CA 90212	Electronic Address	

☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: December 10, 2012

SIGNED: _____

Lupe Pacheco
Declarant

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on January 4, 2013, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:


- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MICHAEL GALEN GERNER
MICHAEL G GERNER, A PROF LAW CORP
425 S BEVERLY DR STE 210
BEVERLY HILLS, CA 90212

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ROSS E. VISELMAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 4, 2013.



Mazie Yip
Case Administrator
State Bar Court